Filed 5/31/19 P. v. Cravens CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE, Plaintiff and Respondent, v. RANDALL TYLER CRAVENS, Defendant and Appellant.	C086134 (Super. Ct. No. 17F2783)

After consultation with his first attorney, defendant Randall Tyler Cravens pleaded no contest to assault with force likely to produce great bodily injury. But prior to sentencing, his substituted attorney moved to withdraw the plea, arguing defendant had received inadequate representation and he was mentally incompetent at the time of the plea. The trial court denied the motion and sentenced defendant to four years in prison pursuant to the plea agreement.

Defendant now contends the trial court abused its discretion in denying his motion to withdraw the plea. Moreover, in supplemental briefing, he argues the matter should be remanded to give the trial court an opportunity to consider granting him mental health

diversion as authorized by Penal Code section 1001.36,[1] which became effective June 27, 2018. (Stats. 2018, ch. 34, § 24.)

We conclude the trial court did not abuse its discretion in denying defendant's motion to set aside his plea, but we will remand the matter to give the trial court the opportunity to consider diversion under section 1001.36.

BACKGROUND

In May 2017, while wearing a manila envelope over his head with holes cut out for his eyes, defendant asked the victim for heroin and discarded fruit in the victim's driveway. The victim pushed and punched defendant, and defendant stabbed the victim in the arm. Defendant told a friend he was off his medications.

Defendant pleaded no contest to assault with force likely to produce great bodily injury (§ 245, subd. (a)(4) -- count two) and admitted a prior serious felony conviction allegation (§ 1170.12) in exchange for dismissal of other counts and allegations and a stipulated prison sentence of four years.

Prior to accepting defendant's plea, the trial court reviewed defendant's completed change of plea form and confirmed defendant's understanding of the plea and its consequences, eliciting direct and cogent responses. The trial court also asked defendant if he had discussed with his attorney the potential defenses available to defendant, and asked whether defendant was thinking clearly about his plea and its consequences. To both questions, defendant answered yes.

The parties stipulated the factual basis for the plea was the police report, and the trial court found that the plea was "free and voluntary, with a knowing and intelligent waiver of rights."

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[1] Undesignated statutory references are to the Penal Code.

Later that summer, defendant's substituted attorney moved to set aside his plea, arguing good cause existed because defendant's first attorney inadequately represented him and defendant was mentally incapacitated at the time of the plea. Defendant declared he had not discussed self-defense with his first attorney; rather, his attorney told him "to serve four years in prison to avoid something worse from happening." Defendant had not been advised that the victim "had a history of violence," nor had he received the police report. Defendant also complained his "mind and mental status was hazy and confused," presumably because he "was not receiving the medications that [he] was supposed to be prescribed and the ones that [he] was being given by the jail were not helping at all." Defendant did not say he would not have entered the plea but for these circumstances. The motion attached, but did not authenticate, certain papers related to defendant's mental health, including his release papers from St. Helena Hospital the month before the assault.

The trial court denied defendant's motion, stating "the standard of proof necessary for the Court to allow for the withdraw of plea is clear and convincing evidence that there was something out there which overcame [defendant's] free will and judgment as it relates to his decision to enter a plea. He does not say that even if he had further advice from [defense counsel], that anything [defense counsel] may or could have done would have changed his mind about entering the plea. He had a benefit from this particular bargain. Likewise, I have no information regarding just to what extent the failure to take medications as directed or anything else affected him to the point where he was not clearly or freely thinking.

"I do have evidence that he stated that he was -- he was -- sufficient thinking that he understood what was going on; that he discussed defenses with counsel as he wanted. I don't know to what extent [defense counsel] could talk to him about every conceivable defense. He works in conjunction with [defendant]. [Defendant] needs to bring up things that he wants to discuss with counsel as well. There's no information with regard to that.

"What I have is a couple of things didn't happen that in retrospect he wishes would have. And I don't have clear and convincing evidence that his will in some way, either by actions of counsel or by some other medical condition, were overcome to the point where he did not enter a plea knowing what he is doing. It's -- particularly with regard to the medical records, they don't -- I don't have anybody who's here to interpret them for me in a manner which would suggest that he was somehow emotionally or by mental health issue to such a degree that he was not understanding what was happening.

"The counter to that is 'entry of plea willfully' is a standard colloquially that I use. I watch people as they enter a plea. I follow up if I see confusion or counsel interfering too much in the answering of questions. He answers questions directly and lucidly which would have indicated an understanding of what was being asked of him. And so I don't see that clear and convincing evidence has been met."

Prior to sentencing, the court ordered two competency evaluations and defendant was found competent both by the experts and the court. Thereafter, the trial court sentenced him to four years in prison in accordance with his plea agreement and subsequently granted him a certificate of probable cause.

DISCUSSION

I

Defendant contends the trial court abused its discretion in denying his motion to withdraw his plea because his first attorney failed to discuss a viable defense prior to that plea (including the victim's alleged history of domestic violence), and defendant was confused due to mental incapacity at the time of the plea.

"A guilty plea may be withdrawn at any time before judgment for good cause shown. (Pen. Code, § 2018; [citation].)" (*People v. Hunt* (1985) 174 Cal.App.3d 95, 102 (*Hunt*), accord, *People v. Cruz* (1974) 12 Cal.3d 562, 565 (*Cruz*).) "Mistake, ignorance or any other factor overcoming the exercise of free judgment is good cause for withdrawal of a guilty plea. [Citations.] But good cause must be shown by clear and

convincing evidence." (*Cruz*, at p. 566; *Hunt*, at p. 103.) "Grant or denial of a motion [to withdraw] lies within the trial court's sound discretion after consideration of all factors necessary to effectuate a just result; a reviewing court will not disturb its decision unless abuse is clearly demonstrated. [Citation.]" (*Hunt*, at p. 103; see also *People v. Jordan* (1986) 42 Cal.3d 308, 316, italics omitted [trial court's discretion "must not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice"].) "Guilty pleas resulting from a bargain should not be set aside lightly and finality of proceedings should be encouraged. [Citation.]" (*Hunt*, at p. 103.) "[A] reviewing court must adopt the trial court's factual findings if substantial evidence supports them. [Citation.]" (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254 (*Fairbank*).)

Defendant argues he showed good cause to withdraw his plea in that he did not discuss available defenses with his attorney and was not aware the victim in the case had a history of domestic violence. However, in a lucid exchange at the plea hearing, defendant personally affirmed that he had discussed available defenses with his attorney prior to the court's acceptance of his plea. Thus, the evidence on this point was in conflict, and the trial court was within its discretion when it credited its own observations of defendant and rejected defendant's contrary self-serving statement. (See *People v. Ravaux* (2006) 142 Cal.App.4th 914, 918 (*Ravaux*) [court properly considered its observations of defendant as well as "defendant's credibility and his interest in the outcome of the proceedings" in rejecting claim that medical condition impaired defendant's judgment]; *Fairbank, supra*, 16 Cal.4th at pp. 1253-1254 [rejecting claimed intoxication contrary to court's observation].)

Further, in light of defendant's failure to attest that he would not have entered the plea agreement if he had been aware of the victim's alleged domestic violence history, we find defendant failed to establish he was prejudiced by his first counsel's alleged ineffective assistance, which is a prerequisite to setting aside a plea on that basis.

(*People v. Breslin* (2012) 205 Cal.App.4th 1409, 1418-1419 [defendant seeking to set aside plea based upon ineffective assistance of counsel must establish prejudice].)

Finally, defendant argues his plea should have been set aside because he was mentally incapacitated at the plea hearing as shown by his declaration that his "mind and mental status was hazy and confused" and that he had not been administered the correct medication at the jail, and by documents related to his recent release from a mental health hospital showing his mental health diagnoses and related prescriptions. But it was defendant's burden to persuade the trial court that his plea was involuntary due to mental incapacitation (See *People v. Gallantier* (1941) 47 Cal.App.2d 148, 150; *People v. Brotherton* (1966) 239 Cal.App.2d 195, 201), and as the trial court found, defendant's undefined and unsubstantiated assertion of confusion, his unspecified allegations of incorrect medications, and the unauthenticated and unexplained mental health records did not provide clear and convincing evidence of good cause to set aside his plea. (See *Cruz, supra,* 12 Cal.3d at pp. 566-567 [conclusory allegations of confusion are insufficient]; *Ravaux, supra,* 142 Cal.App.4th at p. 918 [rejecting defendant's declaration contending he was mentally impaired, which was contrary to statements and observations at the guilty plea]; *Brotherton,* at p. 201 [the trial court is not bound by defendant's uncontradicted statements], accord, *Hunt, supra,* 174 Cal.App.3d at p. 103.) The trial court's determinations are supported by substantial evidence and thus within the court's discretion. (See *Ravaux,* at p. 918; *Hunt,* at p. 104 [reviewing court must resolve factual conflicts in favor of challenged order].)

That the trial court ordered a competency evaluation several months later does not impugn its earlier determination. It merely shows that the trial court was aware of and acted in accordance with its duty to safeguard defendant's right to due process once a doubt about his competency arose. (See § 1368; *People v. Roda*s (2018) 6 Cal.5th 219, 230-231.) The circumstances surrounding the need to conduct the section 1368 evaluations do not appear in the record, but defendant was found competent.

II

In supplemental briefing, defendant argues this matter must be remanded to give the trial court the opportunity to consider granting him mental health diversion as authorized by section 1001.36, which became effective June 27, 2018. (Stats. 2018, ch. 34, § 24.)

Section 1001.36 authorizes a trial court to grant "pretrial diversion" -- postponement of prosecution to allow the defendant to undergo mental health treatment -- if the defendant meets specified requirements. (§ 1001.36, subds. (a), (c).) Successful completion of diversion results in the dismissal of the original charges. (§ 1001.36, subd. (e).) Section 1001.36, subdivision (b)(1) identifies the pertinent criteria, including that "defendant suffers from a mental disorder" and that the "mental disorder was a significant factor in the commission of the charged offense." (§ 1001.36, subd. (b)(1)(A), (B); see also *People v. Frahs* (2018) 27 Cal.App.5th 784, 789-790 (*Frahs*), review granted Dec. 27, 2018, S252220.)

The People argue section 1001.36 is inapplicable to already-adjudicated matters. But defendant urges retroactive application, citing *Frahs, supra*, 27 Cal.App.5th 784, which is under review in the California Supreme Court (S252220) but remains persuasive authority under California Rules of Court, rule 8.1115(e)(1). Defendant also cites *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*) and *People v. Superior Court* (*Lara*) 4 Cal.5th 299 (*Lara*).

Whether a particular statute is intended to apply retroactively is a matter of statutory interpretation. (See *Lara, supra*, 4 Cal.5th at p. 307 [noting "the role of the court is to determine the intent of the Legislature"].) Generally speaking, new criminal legislation is presumed to apply prospectively unless the statute expressly declares a contrary intent. (§ 3.) However, where the Legislature has reduced punishment for criminal conduct, an inference arises under *Estrada* " 'that, in the absence of contrary indications, a legislative body ordinarily intends for ameliorative changes to the criminal

law to extend as broadly as possible, distinguishing only as necessary between sentences that are final and sentences that are not.' [Citations.]" (*Lara*, at p. 308.) Conversely, the *Estrada* rule " 'is not implicated where the Legislature clearly signals its intent to make the amendment prospective, by the inclusion of an express savings clause or its equivalent.' [Citation.]" (*People v. Floyd* (2003) 31 Cal.4th 179, 185, italics omitted (*Floyd*).) While *Estrada* involved the reduction in punishment for a specific offense (*People v. Brown* (2012) 54 Cal.4th 314, 323), this rule was applied in *Lara* to a specific class of individuals, juvenile offenders. (*Lara*, at p. 308.)

Lara reasoned *Estrada* retroactivity applied to the class of juveniles because "[t]he possibility of being treated as a juvenile in juvenile court -- where rehabilitation is the goal -- rather than being tried and sentenced as an adult can result in dramatically different and more lenient treatment" for that juvenile class. (*Lara, supra*, 4 Cal.5th at p. 303.) Finding nothing to rebut the *Estrada* inference, *Lara* applied Proposition 57 retroactively to every juvenile "charged directly in adult court whose judgment was not final at the time [Proposition 57] was enacted. (*Lara*, at pp. 303-304.)

Like *Lara*, affording mentally ill offenders the opportunity to participate in a diversion program that offers them mental health treatment and dismissal of the underlying charge following successful completion of the program in lieu of trial and incarceration unquestionably provides a potential "ameliorating benefit" to a defined class. (*Frahs, supra*, 27 Cal.App.5th at pp. 789-791, review granted; § 1001.36, subds. (a), (e).)

We also concur with *Frahs* that nothing in the act's language or legislative history rebuts the *Estrada* presumption of retroactivity. (*Frahs, supra*, 27 Cal.App.5th at p. 791, review granted.) The statute's stated purposes supports that the Legislature intended section 1001.36's diversion program to be applied as broadly as possible, stating in pertinent part the Legislature's desire to promote: "Increased diversion of individuals

with mental disorders to mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety." (§ 1001.35, subd. (a).)

We further concur with *Frahs* and determine that retroactivity is not precluded by section 1001.36, subdivision (c)'s definition of "pretrial diversion" as "the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to" specified program rules. (See *Frahs, supra*, 27 Cal.App.5th at p. 791, review granted.) The Legislature is presumed to know the existing law, including caselaw, at the time of the enactment. (*In re Lance W.* (1985) 37 Cal.3d 873, 890, fn. 11.) Thus, the Legislature is presumed to have been aware of *Estrada* and *Lara's* rules regarding retroactivity. Therefore, if the Legislature had intended section 1001.36 to apply only to prejudgment cases, it would have said so, and it certainly would have said so in a manner less ambiguous than through its definition of "pretrial diversion." (See *Floyd, supra*, 31 Cal.4th at p. 185 [*Estrada* retroactivity is applicable unless the Legislature clearly signals a contrary intent].) Indeed, a common sense reading of the "pretrial diversion" definition is that it has nothing to do with prospective versus retroactive application of the statute, but rather semantically addresses only the time period during which a judge would normally make a determination regarding mental health diversion. (*Frahs*, at p. 791, review granted.)

We find no meaningful basis to distinguish the treatment of the juvenile offenders identified in *Lara*, who were entitled to access the ameliorative benefits of Proposition 57, affording them the opportunity to have a juvenile court judge determine fitness for juvenile court treatment despite the direct initiation of a case in adult court (*Lara, supra*, 4 Cal.5th at pp. 303-304) and without discussion of the fact that the amendment contemplated that this hearing would occur *prior* to the attachment of jeopardy (Welf. & Inst. Code, § 707, subd. (a)(1)) and where at least one of the defendants identified in the court's discussion had been convicted after a jury trial. (*Lara*, at pp. 309-310 [*People v.*

Vela (2017) 11 Cal.App.5th 68].) Here too, all mentally ill defendants whose appeals are not yet final should be afforded the opportunity to have a trial court determine their eligibility for section 1001.36's mental health diversion. (*Frahs, supra,* 27 Cal.App.5th at p. 791, review granted.)

We have considered an Assembly Floor Analysis discussing a desire to reduce expenses associated with incompetency to stand trial determinations (Assem. Com. on Budget, Bill Analysis of Assem. Bill No. 1810 (2017-2018 Reg. Sess.) as amended June 12, 2018), but this history does not show a clear intent of the Legislature to apply the act prospectively only. (*Floyd, supra,* 31 Cal.4th at p. 185.) This is especially true in light of the codified, broader intention of mental health deferment to "mitigate . . . entry and reentry [of the mentally ill offender] into the criminal justice system." (§ 1001.35, subd. (a).)

Finally, we disagree with the People's assertion that the subsequent enactment of Senate Bill No. 215 amending section 1001.36 (stats. 2018, ch. 1005, § 1, eff. Jan. 1, 2019) alters this analysis. Although the amendment precludes a defendant charged with specified offenses from eligibility in the diversion program (§ 1001.36, subd. (b)(2)), none of the specified offenses apply to preclude defendant's eligibility for deferment (§ 1001.36, subd. (b)(2)(A)-(H)). Nevertheless, the People focus on the amendment's reference to "current charged offenses." (*Ibid*.) However, like the pretrial definition discussed above, nothing in the Legislature's use of that language clearly signals a desire to exclude from deferment those individuals whose pending offenses are not part of the exclusionary list, but whose judgments are not yet final on appeal. (*Floyd, supra,* 31 Cal.4th at p. 185.)

We concur with *Frahs* that section 1001.36 must be retroactively applied to all cases to which it may constitutionally apply, including mentally ill defendants whose convictions are not yet final on appeal. (*Frahs, supra,* 27 Cal.App.5th at p. 791, review granted.) Like *Frahs* and for the reasons explained herein, we see no meaningful basis

to distinguish the retroactive application beneficial to a class of mentally ill offenders from the Supreme Court's treatment of juvenile offenders in *Lara*, *supra*, 4 Cal.5th 299. (*Frahs*, at p. 791, review granted.)

DISPOSITION

The judgment is conditionally reversed, and the case remanded to the trial court for a diversion eligibility hearing. If the trial court determines that defendant qualifies for diversion under section 1001.36, then the court may grant diversion. However, if the court determines that defendant is ineligible for diversion or fails to successfully complete the diversion program, then his convictions and sentence shall be reinstated.

/S/
MAURO, J.

We concur:

/S/
BLEASE, Acting P. J.

/S/
ROBIE, J.